FEB 29

No. 15-415

In the
Supreme Court of the United States

ENCINO MOTORCARS, LLC,
Petitioner,

v.

HECTOR NAVARRO; MIKE SHIRINIAN; ANTHONY PINKINS; KEVIN MALONE; AND REUBEN CASTRO,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

JOINT APPENDIX

STEPHANOS BIBAS
Counsel of Record
JAMES A. FELDMAN
NANCY BREGSTEIN GORDON
UNIVERSITY OF PENNSYLVANIA LAW SCHOOL SUPREME COURT CLINIC
3501 Sansom Street
Philadelphia, PA 19104
(215) 746–2297
sbibas@law.upenn.edu

PAUL D. CLEMENT
Counsel of Record
JEFFREY M. HARRIS
SUBASH S. IYER
BANCROFT PLLC
500 New Jersey Avenue, NW
Seventh Floor
Washington, DC 20001
(202) 234-0090
pclement@bancroftpllc.com

(Additional Counsel Listed on Inside Cover)

February 29, 2016

Petition for Writ of Certiorari Filed September 30, 2015
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KEVEN STEINBERG
THOMPSON, COE AND O'MEARA
12100 WILSHIRE BLVD.
SUITE 1200
LOS ANGELES, CA 90025
(310) 954–2362

Counsel for Respondents

KARL R. LINDEGREN
TODD B. SCHERWIN
COLIN P. CALVERT
FISHER & PHILLIPS LLP
444 S. Flower Street
Suite 1590
Los Angeles, CA 90071
(213) 330-4450

WENDY MCGUIRE COATS
MCGUIRE COATS LLP
3527 Mt. Diablo Blvd., #281
Lafayette, CA 94549
(925) 297-6415

Counsel for Petitioner

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UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 13-55323

HECTOR NAVARRO; MIKE SHIRINIAN; ANTHONY PINKINS; KEVIN MALONE; REUBEN CASTRO

v.

ENCINO MOTORCARS, LLC, ERRONEOUSLY SUED AS MERCEDES BENZ OF ENCINO

DOCKET ENTRIES

Date Filed	#	Docket Text
02/26/2013	1	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. SEND MQ: Yes. The schedule is set as follows: Mediation Questionnaire due on 03/05/2013. Transcript ordered by 03/27/2013. Transcript due 06/25/2013. Appellants Reuben Castro, Kevin Malone, Hector Navarro and Anthony Pinkins opening brief due 08/05/2013. Appellee Encino Motorcars, LLC answering brief due 09/04/2013. Appellant's optional reply brief is due 14 days after service of the answering brief. [8526738] (BG) [Entered: 02/26/2013 10:26 AM]

Date Filed	#	Docket Text
02/26/2013	2	Filed representation notice of S. Keven Steinberg for Appellants. Served on 02/25/2013. [8526758] (BG) [Entered: 02/26/2013 10:33 AM]
03/01/2013	3	Filed (ECF) Appellants Reuben Castro, Kevin Malone, Hector Navarro and Anthony Pinkins Mediation Questionnaire. Date of service: 03/01/2013. [8534359] (Steinberg, S.) [Entered: 03/01/2013 06:28PM]
03/05/2013	4	Filed (ECF) Appellee Encino Motorcars, LLC Mediation Questionnaire. Date of service: 03/05/2013. [8537663] (Scherwin, Todd) [Entered: 03/05/2013 02:21 PM]
06/13/2013	5	Filed order MEDIATION (BS): The Mediation Program of the Ninth Circuit Court of Appeals facilitates settlement while appeals are pending. See Fed. R. App. P 33 and Ninth Cir. R. 33-1. The court has scheduled a telephone settlement assessment conference, with counsel only, on June 25, 2013, at 10:00 a.m. PACIFIC (San Francisco) Time to discuss whether this case is appropriate for participation in the

Date Filed	#	Docket Text
		Mediation Program. The Circuit Mediator will initiate the conference call by contacting each person on the attached list of participants at the telephone number listed. Please be available for the call at least five minutes before the scheduled time. Counsel should review the attached list and inform Mediation Assistant Beatriz Smith by email (Beatriz_Smith@ca9.uscourts.gov) of any corrections to the list. Please notify Circuit Mediator Margaret Corrigan immediately by email (Margaret_Corrigan@ca9.uscourts.gov) if the dispute is settled, the appeal is dismissed or if counsel has an unavoidable scheduling conflict. Please copy all counsel on any such communications. All discussions that take place in the context of the assessment conference are strictly confidential. For more detailed information about the assessment conference, confidentiality, the Mediation Program and its procedures generally, please see the attachment to this order and the

Date Filed	#	Docket Text
		Mediation Program web site: www.ca9.uscourts.gov/mediation. [8666198] (BJB) [Entered: 06/13/2013 10:06 AM]
06/26/2013	6	Filed order MEDIATION (MAC): On June 25, 2013, a telephone conference was held with Circuit Mediator Margaret A. Corrigan. S. Keven Steinberg, Esq. participated on behalf of appellants; Todd Scherwin, Esq. participated on behalf of appellee. The court has determined that this appeal will not be selected for inclusion in the Mediation Program. All further inquiries regarding this appeal, including requests for extensions of time, should be directed to the Clerk's office. Counsel are requested to contact the Circuit Mediator should circumstances develop that warrant further settlement discussions while the appeal is pending. [8682356] (BJB) [Entered: 06/26/2013 12:28 PM]
07/26/2013	7	Filed (ECF) Streamlined request for extension of time to file Opening Brief by Appellants Reuben Castro, Kevin Malone, Hector Navarro and Anthony

Date Filed	#	Docket Text
		Pinkins. New requested due date is 09/04/2013 at 04:00 pm. [8720264] (Steinberg, S.) [Entered: 07/26/2013 04:51 PM]
07/29/2013	8	Streamlined request by Appellants Reuben Castro, Kevin Malone, Hector Navarro and Anthony Pinkins to extend time to file the brief is approved. Amended briefing schedule: Appellants Reuben Castro, Kevin Malone, Hector Navarro and Anthony Pinkins opening brief due 09/04/2013. Appellee Encino Motorcars, LLC answering brief due 10/04/2013. The optional reply brief is due 14 days from the date of service of the answering brief. [8720830] (LW) [Entered: 07/29/2013 09:59AM]
07/30/2013	9	Form 13 streamlined request by Appellants Reuben Castro, Kevin Malone, Hector Navarro and Anthony Pinkins to extend time to file the brief is not approved because it is unnecessary. The streamlined request was approved 7/29/13. [8723098] (LW) [Entered: 07/30/2013 12:54 PM]

Date Filed	#	Docket Text
09/03/2013	10	Submitted (ECF) Opening Brief and excerpts of record for review Submitted by Appellants Reuben Castro, Kevin Malone, Hector Navarro and Anthony Pinkins. Date of service: 09/03/2013. [8766211]-[COURT UPDATE: Attached corrected brief and excerpts. Resent NDA. 09/06/2013 by RY] (Steinberg, S.) [Entered: 09/03/2013 01:56PM]
***		
09/16/2013	13	Filed Appellants Reuben Castro, Kevin Malone, Hector Navarro and Anthony Pinkins paper copies of excerpts of record [10] in 1 volume(s). [8788406] (WWP) [Entered: 09/19/2013 06:54AM]
10/04/2013	14	Submitted (ECF) Answering Brief for review Submitted by Appellee Encino Motorcars, LLC. Date of service: 10/04/2013. [8809818]-[COURT UPDATE: Attached corrected brief. Resent NDA. 10/08/2013 by RY] (Calvert, Colin) [Entered: 10/04/2013 12:36 PM]
10/09/2013	15	Filed clerk order: The answering brief [14] submitted

Date Filed	#	Docket Text
		by Encino Motorcars, LLC is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: red. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate ECF [8815176] (WWP) [Entered: 10/09/2013 11:03AM]
		***
10/18/2013	17	Submitted (ECF) Reply Brief for review Submitted by Appellants Reuben Castro, Kevin Malone, Hector Navarro and Anthony Pinkins. Date of service: 10/18/2013. [8827819] (Steinberg, S.) [Entered: 10/18/2013 03:51 PM]
		***
12/01/2014	20	Notice of Oral Argument on Wednesday, February 11, 2015 09:00 A.M. Courtroom 3 Pasadena, CA.

Date Filed	#	Docket Text
		View the Oral Argument Calendar for your case here. When you have reviewed the calendar, download the ACKNOWLEDGMENT OF HEARING NOTICE form, complete the form, and file it via Appellate ECF or return the completed form to: PASADENA Office. [9331468] (LN) [Entered: 12/01/2014 01:53PM]
***		
01/09/2015	26	REVISED: Notice of Oral Argument on Wednesday. February 11, 2015 09:30 A.M. Courtroom 3 Pasadena CA. View the Oral Argument Calendar for your case here. When you have reviewed the calendar, download the ACKNOWLEDGMENT OF HEARING NOTICE form, complete the form, and file it via Appellate ECF or return the completed form to: PASADENA Office. [9377506] (LN) [Entered: 01/0912015 04:22PM]
02/11/2015	27	ARGUED AND SUBMITTED TO SUSAN P GRABER, KIM MCLANE WARDLAW and JAMES C. MAHAN. [9417806]

Date Filed	#	Docket Text
		(LN) [Entered: 02/11/2015 11:44AM]
03/24/2015	28	FILED OPINION (SUSAN P. GRABER, KIM MCLANE WARDLAW and JAMES C. MAHAN) Dismissal of claims 3, 5, and 7 AFFIRMED; dismissal of claim 1 and the supplemental state-law claims REVERSED; case REMANDED. Costs on appeal awarded to Plaintiffs. Judge: SPG Authoring, FILED AND ENTERED JUDGMENT [9468746]-[COURT UPDATE: In response to Appellants' motion to correct filed 11/19/15, the caption of the docket and opinion have been corrected. 11/24/2015 by RY] {MM) [Entered: 03/24/2015 08:33AM]
03/24/2015	29	Filed (ECF) Appellants Reuben Castro, Kevin Malone, Hector Navarro and Anthony Pinkins Correspondence: Letter brief pursuant to Federal Rules of Appellate Procedure, Rule 28(j). Date of service: 03/24/2015 [9469052] [13-55323] (Steinberg, S.) [Entered: 03/24/2015 09:59AM]
03/31/2015	30	Filed (ECF) Appellants Reuben Castro, Kevin Malone, Hector

Date Filed	#	Docket Text
		Navarro and Anthony Pinkins bill of costs (Form 10) in the amount of $118.08 USD. Date of service: 03/31/2015 [9478612] [13-55323] (Steinberg, S.) [Entered: 03/31/2015 11:43AM]
		***
04/03/2015	32	Filed (ECF) Appellee Encino Motorcars, LLC Motion to extend time to file petition for rehearing until 05/07/2015. Date of service: 04/03/2015. [9483173] [13-55323]-[COURT UPDATE: Updated docket text to reflect correct ECF filing type. 04/03/2015 by TL] (Calvert, Colin) [Entered: 04/03/2015 10:49 AM]
04/08/2015	33	Filed order (SUSAN P GRABER, KIM MCLANE WARDLAW and JAMES C. MAHAN): Appellee's unopposed motion for an extension of time to May 7, 2015, to file a petition for rehearing and rehearing en banc is GRANTED. [9488507] (AF) [Entered: 04/08/2015 02:22PM]
05/07/2015	34	Filed (ECF) Appellee Encino Motorcars, LLC petition for rehearing en banc (from

Date Filed	#	Docket Text
		03/24/2015 opinion). Date of service: 05/07/2015. [9529529] [13-55323] (Calvert, Colin) [Entered: 05/07/2015 03:23PM]
05/18/2015	35	Submitted (ECF) Amicus brief for review (by government or with consent per FRAP 29(a)). Submitted by Brief of Amici Curiae National Automobile Dealers Assoc. and State Automobile Dealers Assocs. For Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon and Washington State ISO Petition for Rehearing En Banc of Defendants Encino Motorcars. Date of service: 05/18/2015. [9541549] [13-55323] (Reid, Felicia) [Entered: 05/18/2015 03:51 PM]
05/18/2015	36	Entered appearance of Amici Curiae NADA and State Automobile Dealers Associations for Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon and Washington State. [9541728] (LA) [Entered: 05/18/2015 04:47PM]
***		

Date Filed	#	Docket Text
05/22/2015	39	Filed (ECF) notice of appearance of Wendy McGuire Coats for Appellee Encino Motorcars, LLC. Date of service: 05/22/2015. [9547676] [13-55323]-[COURT UPDATE: Attached corrected notice (case number). 05/22/2015 by RY] (Calvert, Colin) [Entered: 05/22/2015 12:10 PM]
***		
06/01/2015	41	Filed order (SUSAN P GRABER, KIM MCLANE WARDLAW and JAMES C. MAHAN): Judges Graber and Wardlaw have voted to deny Appellee's petition for rehearing en banc, and Judge Mahan has so recommended. The full court has been advised of the petition for rehearing en banc, and no judge of the court has requested a vote on it. Appellee's petition for rehearing en banc is DENIED. [9556160] (AF) [Entered: 06/01/2015 09:50AM]
06/10/2015	42	MANDATE ISSUED.(SPG, KMW and JCM) Costs taxed against Appellee in the amount of $118.08. [9568325] (SW) [Entered: 06/10/2015 08:22AM]

Date Filed	#	Docket Text
08/24/2015	43	Received letter from the Supreme Court dated 08/20/2015 regarding the application for an ext of time within which to file a petition for a writ of cert...extended the time to and including 9/30/15. Application No: 15A210. [9659461] (RR) [Entered: 08/25/2015 11:31 AM]
10/07/2015	44	Received notice from the Supreme Court: petition for certiorari filed on 09/30/2015. Supreme Court Number 15-415. [9710170] (RR) [Entered: 10/07/2015 12:56 PM]
11/19/2015	45	Filed (ECF) Appellants Reuben Castro, Kevin Malone, Hector Navarro and Anthony Pinkins Motion for miscellaneous relief [Motion to Correct Caption]. Date of service: 11/19/2015. [9763631] [13-55323] (Steinberg, S.) [Entered: 11/19/2015 04:05 PM]
11/24/2015	46	Entered appearance of Appellant Mike Shirinian. [9769557] (HH) [Entered: 11/24/2015 02:32PM]
01/20/2016	47	Received notice from the Supreme Court. Petition for

Date Filed	#	Docket Text
		certiorari GRANTED on 01/15/2016. Supreme Court Number 15-415. [9834029] (RR) [Entered: 01/20/2016 03:38PM]

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA WESTERN DIVISION - LOS ANGELES

No. 2:12-cv-08051-RGK-MRW

HECTOR NAVARRO ET AL,

Plaintiff,

v.

MERCEDES BENZ OF ENCINO,

Defendant.

DOCKET ENTRIES

Date Filed	#	Docket Text
09/18/2012	1	COMPLAINT against Defendant Mercedes Benz of Encino. Case assigned to Judge R. Gary Klausner for all further proceedings. Discovery referred to Magistrate Judge Michael R Wilner. (Filing fee $ 350 PAID.) Jury Demanded., filed by Plaintiffs Mike Shirinian, Hector Navarro, Anthony Pinkins, Kevin Malone, Reuben Castro.(et) (mg). (Entered: 09/24/2012)
09/18/2012		21 DAY Summons Issued re Complaint (Discovery) 1 as to Defendant Mercedes Benz of Encino. (et) (Entered: 09/24/2012)

Date Filed	#	Docket Text
09/18/2012	2	CERTIFICATION AND NOTICE of Interested Parties filed by Plaintiffs Reuben Castro, Kevin Malone, Hector Navarro, Anthony Pinkins, Mike Shirinian. (et) (mg). (Entered: 09/24/2012)
09/24/2012	3	STANDING ORDER by Judge R. Gary Klausner. (rne) (Entered: 09/25/2012)
		***
11/15/2012	5	[DOCUMENT STRICKEN] NOTICE OF MOTION AND MOTION to Dismiss Case *For Failure to State a Claim Upon Which Relief Can Be Granted FRCP 12(b)(6)* filed by Defendant Mercedes Benz of Encino. Motion set for hearing on 12/17/2012 at 09:00 AM before Judge R. Gary Klausner. (Attachments: # 1 Memorandum, # 2 Declaration of Colin P Calvert with Exhibit A, # 3 Notice of Lodgment, # 4 Exhibit A-D to Lodgment, # 5 Exhibit E-K to Lodgment, # 6 Proposed Order)(Calvert, Colin) Modified on 11/16/2012 (rne). (Entered: 11/15/2012)
11/15/2012	6	REQUEST FOR JUDICIAL NOTICE re MOTION to

Date Filed	#	Docket Text
		Dismiss Case *For Failure to State a Claim Upon Which Relief Can Be Granted FRCP 12(b)(6)* MOTION to Dismiss Case *For Failure to State a Claim Upon Which Relief Can Be Granted FRCP 12(b)(6)* 5 filed by Defendant Mercedes Benz of Encino. (Calvert, Colin) (Entered: 11/15/2012)
11/16/2012	7	ORDER TO STRIKE ELECTRONICALLY FILED DOCUMENTS by Judge R. Gary Klausner: the following document(s) be STRICKEN for failure to comply with the Local Rules, General Order and/or the Courts Case Management Order: MOTION to Dismiss Case *For Failure to State a Claim Upon Which Relief Can Be Granted FRCP 12(b)(6)* MOTION to Dismiss Case *For Failure to State a Claim Upon Which Relief Can Be Granted FRCP 12(b)(6)* 5, for the following reasons: Local Rule 7.1-1 No Certification of Interested Parties and/or no copies. (rne) (Entered: 11/16/2012)

Date Filed	#	Docket Text
11/16/2012	8	of Interested Parties filed by Defendant Mercedes Benz of Encino, (Calvert, Colin) (Entered: 11/16/2012)
11/16/2012	9	NOTICE OF MOTION AND MOTION to Dismiss Case *For Failure to State A Claim Upon Which Relief Can Be Granted FRCP 12(b)(6)* filed by Defendant Mercedes Benz of Encino. Motion set for hearing on 12/17/2012 at 09:00 AM before Judge R. Gary Klausner. (Attachments: # 1 Memorandum of Points and Authorities, # 2 Declaration of Colin P Calvert with Exhibit A, # 3 Notice of Lodgment, # 4 Exhibit A-D to Lodgment, # 5 Exhibit E-K to Lodgment, # 6 Proposed Order)(Calvert, Colin) (Entered: 11/16/2012)
11/16/2012	10	REQUEST FOR JUDICIAL NOTICE re MOTION to Dismiss Case *For Failure to State A Claim Upon Which Relief Can Be Granted FRCP 12(b)(6)* MOTION to Dismiss Case *For Failure to State A Claim Upon Which Relief Can Be Granted FRCP 12(b)(6)* 9 filed by Defendant Mercedes

Date Filed	#	Docket Text
		Benz of Encino. (Calvert, Colin) (Entered: 11/16/2012)
11/19/2012	11	NOTICE of Related Case(s) filed by Defendant Mercedes Benz of Encino. Related Case(s): None (Calvert, Colin) (Entered: 11/19/2012)
11/19/2012	12	MINUTES: (IN CHAMBERS) NOTICE TO ALL PARTIES AND ORDER: On the Court's own motion, defendant Mercedes Benz of Encino's Motion to Dismiss Case 9 , filed on November 16, 2012 and noticed for hearing on December 17, 2012 at 9:00 a.m., is hereby CONTINUED TO January 7, 2013 at 9:00 a.m. IT IS SO ORDERED by Judge R. Gary Klausner. (ir) (Entered: 11/19/2012)
12/12/2012	13	NOTICE OF MOTION AND MOTION for Sanctions Federal Rules of Civil Procedure Rule 11 and Local Rule 11-9 filed by Plaintiffs Reuben Castro, Kevin Malone, Hector Navarro, Anthony Pinkins, Mike Shirinian. Motion set for hearing on 1/14/2013 at 09:00 AM before Judge R. Gary Klausner. (Attachments:

Date Filed	#	Docket Text
		# 1 Proposed Order Re Motion for Sanctions in the Amount of $19,175.00 Pursuant to Federal Rules of Civil Procedure Rule 11 and Local Rule 11-9)(Steinberg, S) (Entered: 12/12/2012)
12/17/2012	14	to Motion to Dismiss for Failure to State a Claim Upon Which Relief Can be Granted (FRCP 12(B)(6); Memorandum of Points and Authorities; Declaration of S. Keven Steinberg; Exhibits Opposition re: MOTION to Dismiss Case *For Failure to State A Claim Upon Which Relief Can Be Granted FRCP 12(b)(6)* MOTION to Dismiss Case *For Failure to State A Claim Upon Which Relief Can Be Granted FRCP 12(b)(6)* 9 *Plaintiff's Opposition to Motion* filed by Plaintiffs Reuben Castro, Kevin Malone, Hector Navarro, Anthony Pinkins, Mike Shirinian. (Steinberg, S) (Entered: 12/17/2012)
12/17/2012	15	REQUEST FOR JUDICIAL NOTICE re MOTION to Dismiss Case *For Failure to State A Claim Upon Which Relief Can Be Granted FRCP*

Date Filed	#	Docket Text
		12(b)(6) MOTION to Dismiss Case *For Failure to State A Claim Upon Which Relief Can Be Granted FRCP 12(b)(6)* 9 *"Request for Judicial Notice in Support of Plaintiffs' Opposition to Motion to Dismiss for Failure to State a Claim Upon Which Relief Can be Granted (FRCP 12(B)(6)); Exhibit"* filed by Plaintiffs Reuben Castro, Kevin Malone, Hector Navarro, Anthony Pinkins, Mike Shirinian. (Steinberg, S) (Entered: 12/17/2012)
12/21/2012	16	OPPOSITION in opposition re: MOTION for Sanctions Federal Rules of Civil Procedure Rule 11 and Local Rule 11-9 13 filed by Defendant Mercedes Benz of Encino. (Attachments: # 1 Declaration Colin P Calvert in support, # 2 Declaration Todd B. Scherwin in support)(Calvert, Colin) (Entered: 12/21/2012)
12/21/2012	17	OPPOSITION in opposition re: MOTION to Dismiss Case *For Failure to State A Claim Upon Which Relief Can Be Granted FRCP 12(b)(6)* MOTION to Dismiss Case *For Failure to*

Date Filed	#	Docket Text
		State A Claim Upon Which Relief Can Be Granted FRCP 12(b)(6) 9 filed by Defendant Mercedes Benz of Encino. (Calvert, Colin) (Entered: 12/21/2012)
12/21/2012	18	NOTICE OF ERRATA filed by Defendant Mercedes Benz of Encino. correcting Objection/Opposition (Motion related), Objection/Opposition (Motion related) 17 (Calvert, Colin) (Entered: 12/21/2012)
12/21/2012	19	REPLY in support MOTION to Dismiss Case *For Failure to State A Claim Upon Which Relief Can Be Granted FRCP 12(b)(6)* MOTION to Dismiss Case *For Failure to State A Claim Upon Which Relief Can Be Granted FRCP 12(b)(6)* 9 filed by Defendant Mercedes Benz of Encino. (Calvert, Colin) (Entered: 12/21/2012)
12/31/2012	20	REPLY Reply to Opposition to Motion for Sanctions MOTION for Sanctions Federal Rules of Civil Procedure Rule 11 and Local Rule 11-9 13 ; *Memorandum of Points and Authorities; Declaration of S. Keven Steinberg; Exhibit* filed by

Date Filed	#	Docket Text
		Plaintiffs Reuben Castro, Kevin Malone, Hector Navarro, Anthony Pinkins, Mike Shirinian. (Steinberg, S) (Entered: 12/31/2012)
12/31/2012	21	REQUEST FOR JUDICIAL NOTICE *in Support of Plaintiffs' Reply to Opposition to Motion for Sanctions in the Amount of $19,175.00 Pursuant to Federal Rules of Civil Procedure Rule 11 and Local Rule 11-9* filed by Plaintiffs Reuben Castro, Kevin Malone, Hector Navarro, Anthony Pinkins, Mike Shirinian. (Steinberg, S) (Entered: 12/31/2012)
01/02/2013	22	(IN CHAMBERS) NOTICE TO ALL PARTIES AND ORDER by Judge R. Gary Klausner. Defendants Motion to Dismiss Case For Failure to State A Claim Upon Which Relief Can Be Granted FRCP 12(b)(6) (DE 9), noticed for hearing on January 7, 2013, has been taken under submission and off the motion calendar. No appearances by counsel are necessary. The Court will issue a ruling after full consideration

Date Filed	#	Docket Text
		of properly submitted pleadings. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY.(sw) TEXT ONLY ENTRY (Entered: 01/02/2013)
01/03/2013	23	ORDER SETTING SCHEDULING CONFERENCE by Judge R. Gary Klausner. Rule 26 Meeting Report due by 3/4/2013. Scheduling Conference set for 3/11/2013 09:00 AM before Judge R. Gary Klausner. (rne) (Entered: 01/03/2013)
01/09/2013	24	MINUTE ORDER IN CHAMBERS by Judge R. Gary Klausner: re: MOTION for Sanctions Federal Rules of Civil Procedure Rule 11 and Local Rule 11-9 13 The above-referenced motion, noticed for hearing on January 14, 2013, has been taken under submission and off the motion calendar. No appearances by counsel are necessary. (rne) (Entered: 01/09/2013)
01/25/2013	25	MINUTES: (IN CHAMBERS) Order Re: Defendant's Motion to Dismiss 9 The Court GRANTS Defendant's Motion to Dismiss

Date Filed	#	Docket Text
		as to Plaintiffs' First, Third, Fifth, and Seventh claims. The Court sua sponte DISMISSES the remaining state law causes of action. As such, Plaintiffs' Complaint is dismissed in its entirety IT IS SO ORDERED by Judge R. Gary Klausner. (MD JS-6. Case Terminated) (ir) (Entered: 01/25/2013)
02/14/2013	26	MINUTES: (IN CHAMBERS) Order Re: Plaintiff's Motion for Sanctions Pursuant to FRCP 11 13 is DENIED IT IS SO ORDERED by Judge R. Gary Klausner. (ir) (Entered: 02/14/2013)
02/22/2013	27	NOTICE Notice of Appeal-Plaintiffs' Notice of Appeal to the United States Court of Appeal for the Ninth Circuit of Order Re: Motion to Dismiss for Failure to State a Claim Upon Which Relief Can be Granted (FRCP 12(B)(6) Representation Statement filed by Plaintiffs and Appellants Reuben Castro, Kevin Malone, Hector Navarro, Anthony Pinkins, Mike Shirinian. (Steinberg, S) (Entered: 02/22/2013)

Date Filed	#	Docket Text
02/25/2013	28	NOTICE OF ERRATA filed by Plaintiffs Reuben Castro, Kevin Malone, Hector Navarro, Anthony Pinkins, Mike Shirinian. correcting Notice (Other), 27 *RE Notice of Appeal Plaintiffs' Notice of Appeal to the United States Court of Appeal For the Ninth Circuit of Order Re: Motion to Dismiss For Failure to State a Claim Upon Which Relief Can be Granted (FRCP 12(B)(6))* (Steinberg, S) (Entered: 02/25/2013)
02/25/2013	29	NOTICE OF APPEAL to the 9th CCA filed by Plaintiffs Reuben Castro, Kevin Malone, Hector Navarro, Anthony Pinkins, Mike Shirinian. Appeal of Order on Motion to Dismiss Case, 25 (Appeal fee of $455 receipt number 0973-11715457 paid.) (Steinberg, S) (Entered: 02/25/2013)
02/26/2013	30	NOTIFICATION by Circuit Court of Appellate Docket Number 13-55323, 9th CCA regarding Notice of Appeal to 9th Circuit Court of Appeals, 29 as to Plaintiffs Reuben Castro, Kevin Malone, Hector Navarro, Anthony Pinkins, Mike

Date Filed	#	Docket Text
		Shirinian. (car) (Entered: 03/01/2013)
03/24/2015	31	OPINION from Ninth Circuit Court of Appeals filed re: Notice of Appeal to 9th Circuit Court of Appeals, 29 filed by Mike Shirinian, Kevin Malone, Anthony Pinkins, Reuben Castro, Hector Navarro. CCA # 13-55323. Dismissal of claims 3, 5, and 7 AFFIRMED; dismissal of claim 1 and the supplemental state-law claims REVERSED; case REMANDED. Costs on appeal awarded to Plaintiffs. [See document for all details] (mat) (Main Document 31 replaced on 11/25/2015) (mat).[Per 9th CCA][The opinion has been corrected. 11/24/2015 Modified on 11/25/2015 (mat). (Entered: 03/26/2015)
04/08/2015	32	ORDER from Ninth Circuit Court of Appeals filed re: Notice of Appeal to 9th Circuit Court of Appeals, 29 filed by Mike Shirinian, Kevin Malone, Anthony Pinkins, Reuben Castro, Hector Navarro. CCA # 13-55323. Appellee's unopposed motion for an extension of time

Date Filed	#	Docket Text
		to May 7, 2015, to file a petition for rehearing and rehearing en banc is GRANTED. (car) (Entered: 04/09/2015)
06/01/2015	33	ORDER from Ninth Circuit Court of Appeals filed re: Notice of Appeal to 9th Circuit Court of Appeals, 29 filed by Mike Shirinian, Kevin Malone, Anthony Pinkins, Reuben Castro, Hector Navarro. CCA # 13-55323. Appellee's petition for rehearing en banc is DENIED. (mat) (Entered: 06/03/2015)
06/10/2015	34	MANDATE of Ninth Circuit Court of Appeals filed re: Notice of Appeal 29 CCA # 13-55323. The judgment of the 9th Circuit Court, entered March 24, 2015, takes effect this date. This constitutes the formal mandate of the 9th CCA issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure. Costs are taxed against the appellee in the amount of $118.08. [See USCA OPINION 31 AFFIRMED, REVERSED AND REMANDED] (mat) (Entered: 06/12/2015)

Date Filed	#	Docket Text
06/18/2015	35	SCHEDULING NOTICE TO ALL PARTIES AND ORDER by Judge R. Gary Klausner. A scheduling conference has been placed on calendar for September 21, 2015 at 9:00 a.m. The Conference will be held pursuant to F.R.Civ. P 16(b). Trial counsel must be present and there are no telephonic appearances. Counsel are ordered to file a joint statement providing a brief factual summary of the case, including the claims being asserted. The parties are reminded of their obligations to disclose information and confer on a discovery plan not later than 21 days prior to the scheduling conference, and to file a joint statement with the Court not later than 14 days after they confer, as required by F.R. Civ.P 26 and the Local Rules of this Court. Failure to comply may lead to the imposition of sanctions. Plaintiffs counsel is directed to give notice of the scheduling conference to each party that makes an initial appearance in the action after this date. Not later than 5 court

Date Filed	#	Docket Text
		days prior to the Scheduling Conference, counsel are ordered to confer and electronically file (joint) Form ADR-1 (and proposed order, Form ADR 12), selecting one of the three settlement options available. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY (pso) TEXT ONLY ENTRY (Entered: 06/18/2015)
09/01/2015	36	STIPULATION to Continue Scheduling Conference from September 21, 2015 to January 19, 2016 filed by defendant Mercedes Benz of Encino. (Attachments: # 1 Proposed Order Order Granting Joint Stipulation Requesting a Continuance of Scheduling Conference)(Calvert, Colin) (Entered: 09/01/2015)
09/02/2015	37	ORDER GRANTING STIPULATION JOINT STIPULATION REQUESTING A CONTINUANCE OF SCHEDULING CONFERENCE 36 by Judge R. Gary Klausner. Pursuant to the stipulation of the parties, and good cause appearing, Scheduling

Date Filed	#	Docket Text
		Conference currently scheduled for September 21, 2015 has been continued to December 14, 2015 at 9:00 a.m. (lom) (Entered: 09/02/2015)
11/06/2015	38	REQUEST TO SUBSTITUTE ATTORNEY Keven Steinberg in place of attorney Keith Fink, Sara Hernandez and Keven Steinberg of Fink & Steinberg filed by PLAINTIFF Hector Navarro. (Steinberg, Keven) (Entered: 11/06/2015)
11/06/2015	39	REQUEST TO SUBSTITUTE ATTORNEY Keven Steinberg in place of attorney Keith Fink, Sarah Hernandez and Keven Steinberg of Fink & Steinberg filed by PLAINTIFF Mike Shirinian. (Steinberg, Keven) (Entered: 11/06/2015)
11/06/2015	40	REQUEST TO SUBSTITUTE ATTORNEY Keven Steinberg in place of attorney Keith Fink, Sarah Hernandez and Keven Steinberg of Fink & Steinberg filed by Plaintiff Anthony Pinkins. (Steinberg, Keven) (Entered: 11/06/2015)
11/06/2015	41	REQUEST TO SUBSTITUTE ATTORNEY Keven Steinberg in place of attorney Keith Fink,

Date Filed	#	Docket Text
		Sarah Hernandez and Keven Steinberg of Fink & Steinberg filed by Plaintiff Kevin Malone. (Steinberg, Keven) (Entered: 11/06/2015)
11/06/2015	42	REQUEST TO SUBSTITUTE ATTORNEY Keven Steinberg in place of attorney Keith Fink, Sarah Hernandez and Keven Steinberg of Fink & Steinberg filed by Plaintiff Reuben Castro. (Steinberg, Keven) (Entered: 11/06/2015)
11/09/2015	44	ORDER ON REQUEST FOR APPROVAL OF SUBSTITUTION OF ATTORNEY by Judge R. Gary Klausner: The Court hereby orders that the request of: Hector Navarro, Plaintiff to substitute Keven Steinberg as attorney of record instead of Keith Fink, Sarah Hernandez and Keven Steinberg of Fink & Steinberg, 38 (bp) Modified on 11/13/2015 (bp). (Entered: 11/13/2015)
11/09/2015	45	ORDER ON REQUEST FOR APPROVAL OF SUBSTITUTION OF ATTORNEY by Judge R. Gary Klausner: The Court hereby

Date Filed	#	Docket Text
		orders that the request of: Kevin Malone, Plaintiff to substitute Keven Steinberg as attorney of record instead of Keith Fink, Sarah Hernandez and Kevin Steinberg of Fink & Steinberg, 41 (bp) (Entered: 11/13/2015)
11/09/2015	46	ORDER ON REQUEST FOR APPROVAL OF SUBSTITUTION OF ATTORNEY by Judge R. Gary Klausner: The Court hereby orders that the request of: Anthony Pinkins, Plaintiff to substitute Keven Steinberg as attorney of record instead of Keith Fink, Sarah Hernandez and Keven Steinberg of Fink & Steinberg, 40 (bp) (Entered: 11/13/2015)
11/09/2015	47	ORDER ON REQUEST FOR APPROVAL OF SUBSTITUTION OF ATTORNEY by Judge R. Gary Klausner: The Court hereby orders that the request of: Mike Shirinian, Plaintiff to substitute Keven Steinberg as attorney of record instead of Keith Fink, Sarah Hernandez and Keven Steinberg of Fink & Steinberg, 39 (bp) (Entered: 11/13/2015)

Date Filed	#	Docket Text
11/09/2015	48	ORDER ON REQUEST FOR APPROVAL OF SUBSTITUTION OF ATTOERNEY by Judge R. Gary Klausner: The Court hereby orders that the request of: Reuben Castro, Plaintiff to substitute Keven Steinberg as attorney of record instead of Keith Frank, Sarah Hernandez and Keven Steinberg of Fink & Steinberg, 42 (bp) (Entered: 11/13/2015)
11/10/2015	43	NOTICE TO FILER OF DEFICIENCIES in Electronically Filed Documents RE: REQUEST TO SUBSTITUTE ATTORNEY Keven Steinberg in place of attorney Keith Fink, Sarah Hernandez and Keven Steinberg of Fink & Steinberg 42 , REQUEST TO SUBSTITUTE ATTORNEY Keven Steinberg in place of attorney Keith Fink, Sarah Hernandez and Keven Steinberg of Fink & Steinberg 39 , REQUEST TO SUBSTITUTE ATTORNEY Keven Steinberg in place of attorney Keith Fink, Sarah Hernandez and Keven

Date Filed	#	Docket Text
		Steinberg of Fink & Steinberg 41 , REQUEST TO SUBSTITUTE ATTORNEY Keven Steinberg in place of attorney Keith Fink, Sara Hernandez and Keven Steinberg of Fink & Steinberg 38 , REQUEST TO SUBSTITUTE ATTORNEY Keven Steinberg in place of attorney Keith Fink, Sarah Hernandez and Keven Steinberg of Fink & Steinberg 40 The following error(s) was found: Other error(s) with document(s) are specified below: G-01 Request for Approval of Substitution of Attorney or Withdrawal of Counsel not submitted. In response to this notice the court may order (1) an amended or correct document to be filed (2) the document stricken or (3) take other action as the court deems appropriate. You need not take any action in response to this notice unless and until the court directs you to do so. (bp) (Entered: 11/10/2015)
11/19/2015	49	STIPULATION to Continue Scheduling Conference from 12/14/15 to April 13, 2016 (120

Date Filed	#	Docket Text
		days) filed by defendant Mercedes Benz of Encino. (Attachments: # 1 Proposed Order Granting Joint Stipulation Requesting A Continuance of Scheduling Conference)(Calvert, Colin) (Entered: 11/19/2015)
11/20/2015	50	ORDER GRANTING JOINT STIPULATION REQUESTING A CONTINUANCE OF SCHEDULING CONFERENCE TO 2/22/2016 at 09:00 AM 49 by Judge R. Gary Klausner (lc) (Entered: 11/20/2015)

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

No. 2:12-cv-08051-RGK-MRW

HECTOR NAVARRO, MIKE SHIRINIAN, ANTHONY PINKINS, KEVIN MALONE, and REUBEN CASTRO,

Plaintiffs,

v.

MERCEDES BENZ OF ENCINO, a Corporation,

Defendant.

Plaintiffs Hector Navarro, Anthony Pinkins, Kevin Malone and Reuben Castro, by and through its attorneys of record, for its Complaint against Defendants, allege as follows:

JURISDICTION

1. Original jurisdiction is had in this action which is being brought pursuant to the *Fair Labor Standards Act* ("FLSA"), codified at 29 U.S.C. § 201, *et seq*.

2. This Court also has supplemental jurisdiction over the California State Law claims under 28 U.S.C § 1367 in that all such claims are so related to claims in this action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

VENUE

3. Venue is proper in this Court under 28 U.S.C. §1391 in that all parties, including the Defendants reside or are domiciled in this State; because all or a

substantial part of the acts, events or omissions giving rise to the claims occurred in this District; and there appears to be no other District in which this action may otherwise be brought.

PARTIES

4. Hector Navarro is and at all times relevant hereto was and individual and a resident of the County of Los Angeles, State of California.

5. Mike Shirinian is and at all times relevant hereto was and individual and a resident of the County of Los Angeles, State of California.

6. Anthony Pinkins is and at all times relevant hereto was and individual and a resident of the County of Los Angeles, State of California.

7 Kevin Malone is and at all times relevant hereto was and individual and a resident of the County of Los Angeles, State of California.

8. Reuben Castro is and at all times relevant hereto was and individual and a resident of the County of Los Angeles, State of California.

9. Mercedes Benz of Encino ("MBE") is believed to be a Corporation existing under the laws of the State of California with its principal place of business in Encino, which is in the County of Los Angeles, State of California.

10. Hector Navarro, Anthony Pinkins, Kevin Malone and Reuben Castro (collectively, ("Plaintiffs") are current or former employees of Defendant MBE pursuant to and as defined in 29 U.S.C. §203.

11. MBE is or was the employer of Plaintiffs pursuant to and as defined in 29 U.S.C. §203.

12. MBE at all times alleged herein, was engaged in commerce pursuant to and as defined in 29 U.S.C. §203.

GENERAL ALLEGATIONS

13. Plaintiffs bring this action to recover for, *inter alia*: failure to pay wages for hours worked, failure to pay overtime wages, failure to pay minimum wages and unpaid meal and rest periods.

14. Plaintiff Reuben Castro is a former and Plaintiffs Hector Navarro, Anthony Pinkins and Kevin Malone are current Service Advisors of MBE, who held and/or currently hold non-exempt positions at MBE in the State of California for a period of time within the four (4) years preceding the filing of this action.

15. MBE owns, operates and manages a Mercedes Benz automobile dealership in Encino, California. MBE sells and services both new and used Mercedes Benz automobiles. As part of the dealership, MBE has a service center where Service Advisors, such as Plaintiffs, are employed to accept cars for service at this dealership. These Service Advisors, including Plaintiffs are mandated to work at MBE from 7:00 a.m. to 6:00 p.m. at least five (5) days a week. During this time period, the Service Advisors, including Plaintiffs are required to remain at their service posts or constantly be "on call" and available by cell phone, email or text message should MBE or its customers need them for anything. While oftentimes these Service Advisors, including Plaintiffs are unable to take a meal or rest break, when indeed they are able to do so, they must remain "on call" and are frequently interrupted to attend to their work duties. Even

during vacations, the Service Advisors, including Plaintiffs must remain "on-call."

16. The job duties and obligations of these Service Advisors, including Plaintiffs are to meet and greet Mercedes Benz owners as they enter the service area of the dealership and then to evaluate the service and/or repair needs of the vehicle owner in light of complaints given them by these vehicle owners. Upon evaluation of the service needs of the vehicle, the Service Advisors, including Plaintiffs then solicit and suggests that certain service be conducted on the vehicle to remedy the complaints of the vehicle owner by conducting certain repairs at MBE and through MBE's own mechanics. The Service Advisors, including Plaintiffs are also duty bound and obligated by MBE to solicit and suggest that supplemental service be performed on the vehicle above and beyond that which is required in response to the initial complaints of the vehicle owner. The Service Advisors, including Plaintiffs then write up an estimate for the repairs and services and provides that to the vehicle owner. The vehicle is then taken to the mechanics at MBE for repair and maintenance.

17 As required by MBE and oftentimes while the vehicle is with MBE mechanics, the Service Advisors, including Plaintiffs will then call the vehicle owner and solicit and suggest that additional work be performed on the vehicle at additional cost.

18. The Service Advisors, including Plaintiffs are not paid a salary or an hourly wage. Instead, MBE mandates that the Service Advisors, including Plaintiffs work on a pure commission basis. Specifically, the Service Advisors', including Plaintiffs'

source of revenue is based on what services he can solicit and suggest to the MBE customer. Thus, the more "up-selling" the Service Advisor does, the greater his commission will be.

19. As part of MBE training and during MBE employee meetings, MBE instructs its Service Advisors, including Plaintiffs to solicit and suggest to the vehicle owner, as many repairs to the vehicle as possible, including "preventative maintenance" or "periodic" or "scheduled" maintenance. With this, MBE derives greater income and revenue and the Service Advisor's, including Plaintiffs' commission is greater.

20. Also part of the Service Advisors' and Plaintiffs' duties and obligations is a mandate of MBE to remain in telephone contact with MBE customers at all times during work Horus. As such, MBE requires the Service Advisors, including Plaintiffs to use MBE phones to keep in such contact.

21. While the Service Advisors, including Plaintiffs work from 7:00 a.m. to 6:00 p.m. daily, not until recently has MBE implemented a system to track and record the work hours of these Service Advisors and Plaintiffs. Thus, MBE has failed for many years to properly account and track the long work hours of these Service Advisors and Plaintiffs.

22. MBE maintains a workplace that violates numerous Federal and California wage and hour laws. Specifically, they exploit and take advantage of their Service Advisors, including Plaintiffs by, *inter alia*, refusing to pay overtime compensation, refusing to pay for all hours worked, refusing to pay minimum

wage, refusing to provide them with meal and rest breaks, and refusing to provide accurate and itemized wage statements.

23. Throughout Plaintiffs' employment, MBE failed to provide Plaintiffs with accurate and itemized wage statements showing, among other things, gross wages earned, total hours worked, net wages earned, and all applicable hourly rates in effect during each pay period and the corresponding number of hours worked at each hourly rate. MBE also failed to maintain complete and accurate payroll records for Plaintiffs showing, among other things, gross wages earned, total hours worked, net wages earned, and all applicable hourly rates in effect during each pay period and the corresponding number of hours worked at each hourly rate.

FIRST CAUSE OF ACTION

VIOLATIONS OF *FAIR LABOR STANDARDS ACT* [29 U.S.C. § 201, *et seq.*]

24. Plaintiffs reallege and incorporate herein by reference, as though set forth in full, each and every allegation contained in Paragraphs 1 through 23, inclusive.

25. Fair Labor Standards Act ("FLSA") regulation 29 C.F.R. § 779.372(c)(4) as originally enacted some time ago, provided that a service manager, service writer, service advisor, or service salesman at an automobile dealership, who is not primarily engaged in the work of a salesman, partsman, or mechanic is not exempt under section 13(b)(10)(A). However, Section 779.372(c)(4) was deleted from the regulations in April 2011.

26. Specifically, on April 5, 2011, the Department of Labor decided not to adopt the proposed changes to Section 779.372(c)(4) and instead, agreed with the position of the AFL-CIO and determined that Service Advisors should be treated as overtime eligible as stated in the current regulation. The Department of Labor announcement went on the say that "the Department has concluded that the current 779.372(c) sets forth the 'appropriate approach' to determining whether employees in such positions are subject to the exemption." 76 Federal Register 18838 (April 5, 2011).

27. Additionally. Industrial Welfare Commission Wage Orders contained in Title 8 of the *California Code of Regulations* (Wage Orders) applies to Plaintiffs in their capacity as employees of MBE. The Wage Orders provide, among other things, that for each hour in excess of forty (40) hours per week and/or each hour in excess of eight (8) hours per day, Plaintiffs should receive pay at not less than one and one-half (1½) times their regular rate of pay. The Wage Orders also provide that for any work in excess of twelve (12) hours per day, Plaintiffs should receive pay at not less than twice their regular rate of pay.

28. Throughout their employment with MBE, Plaintiffs were not exempt employees under the Wage Orders or Federal or California law Plaintiffs were neither persons employed in an administrative, executive nor professional capacity as defined in the Wage Orders and Federal or California law.

29. Plaintiffs as part of their job duties were required to work in excess of forty (40) hours per week and/or eight (8) hours per day and have not been paid any overtime wage.

30. Plaintiffs bring this action to recover the balance of all unpaid wages owed to them, with interest thereon, under the FLSA, for uncompensated overtime as required under the Wage Orders and Federal or California law, to the fullest extent permitted under the statutory time period and pursuant to 29 U.S.C. §§ 215 and 216.

31. In addition to payment of their past wages and all applicable penalties allocable under the law, with interest thereon, Plaintiffs seek attorneys' fees and costs incurred in prosecuting this action under the FLSA [29 U.S.C. §§215 and 216].

SECOND CAUSE OF ACTION

VIOLATIONS OF CALIFORNIA *LABOR CODE* § 510 AND 1194, *et seq.*

32. Plaintiffs reallege and incorporate herein by reference, as though set forth in full, each and every allegation contained in Paragraphs 1 through 31, inclusive.

33. Throughout their employment with MBE, Plaintiffs were not exempt employees under the Wage Orders or Federal or California law. Plaintiffs were neither persons employed in an administrative, executive nor professional capacity as defined in the Wage Orders and Federal or California law.

34. Plaintiffs as part of their job duties were required to work in excess of forty (40) hours per week and/or eight (8) hours per day and have not been paid any overtime wage. Pursuant to California *Labor Code* § 510, an employer must pay an employee overtime when the employee works more than eight (8) hours a day.

35. Plaintiffs bring this action to recover the balance of all unpaid wages owed to them, with interest thereon, under *Labor Code* §§ 510 and 1194, *et seq.*, for uncompensated overtime as required under the Wage Orders and Federal or California law, to the fullest extent permitted under the statutory time period.

36. In addition to payment of their past wages and all applicable penalties allocable under the law, with interest thereon, Plaintiffs seek attorneys' fees and costs incurred in prosecuting this action under California *Labor Code* § 1194, *et seq.*

THIRD CAUSE OF ACTION

VIOLATIONS OF *FLSA* [29 U.S.C. §206]

(AGAINST MBE AND DOES 1 TO 50)

37 Plaintiffs reallege and incorporate herein by reference, as though set forth in full, each and every allegation contained in Paragraphs 1 through 36, inclusive.

38. As alleged herein, at all relevant times, the FLSA and Wage Orders applied to Plaintiffs in their capacity as employees of MBE. 29 U.S.C. §206 states in pertinent part, that every employee shall pay to each employee, not less than $5.85 per hour beginning on the 60th day after May 25, 2007; $6.55 an hour beginning 12 month after that 60th day; and $7.25 an hour, beginning 24 months after that 60th day The Wage Orders of the State of California provide, among other things, that all employees in California must be paid the minimum wage as required by state law, which is currently eight dollars ($8.00) per hour.

39. As alleged herein, Plaintiffs were required to work for wages less than the legal minimum fixed by California law and/or were required to work without any payment of wages whatsoever.

40. Plaintiffs bring this action to recover the balance of all unpaid wages owed to them, with interest thereon, under 29 U.S.C. §206 as well as under California *Labor Code* § 1194, *et seq.*, for MBE's failure to pay Plaintiffs the legal minimum wage and/or payment of actual wages for all hours worked as required under the Wage Orders and Federal and California law, to the fullest extent permitted under the statutory time period.

41. In addition, pursuant to the FLSA [29 U.S.C. §§215 and 216] and California *Labor Code* § 1194.2, Plaintiffs are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

42. In addition to payment of their past wages and all applicable penalties allocable under the law, with interest thereon, Plaintiffs will seek attorneys' fees and costs incurred in prosecuting this action under the FLSA [29 U.S.C. §§215 and 216] and California *Labor Code* § 1194, *et seq.*

FOURTH CAUSE OF ACTION
VIOLATIONS OF CALIFORNIA *LABOR CODE* §§ 1197 AND 1194, *et seq.*
(AGAINST MBE AND DOES 1 TO 50)

43. Plaintiffs reallege and incorporate herein by reference, as though set forth in full, each and every allegation contained in Paragraphs 1 through 42, inclusive.

44. As alleged herein, at all relevant times, the FLSA and Wage Orders and California Laws applied to Plaintiffs in their capacity as employees of MBE. Pursuant to California *Labor Code* § 1197, "[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful." The Wage Orders of the State of California provide, among other things, that all employees in California must be paid the minimum wage as required by state law. which is currently eight dollars ($8.00) per hour.

45. As alleged herein, Plaintiffs were required to work for wages less than the legal minimum fixed by California law and/or were required to work without any payment of wages whatsoever.

46. Plaintiffs bring this action to recover the balance of all unpaid wages owed to them, with interest thereon, for MBE's failure to pay Plaintiffs the legal minimum wage and/or payment of actual wages for all hours worked as required under the Wage Orders and Federal and California law, to the fullest extent permitted under the statutory time period.

47. In addition, Plaintiffs are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

48. In addition to payment of their past wages and all applicable penalties allocable under the law, with interest thereon, Plaintiffs will seek attorneys' fees and costs incurred in prosecuting this action.

FIFTH CAUSE OF ACTION
VIOLATIONS OF FLSA [29 U.S.C. §207]
(AGAINST DEFENDANTS AND DOES 1 TO 50)

49. Plaintiffs reallege and incorporate herein by reference, as though set forth in full, each and every allegation contained in Paragraphs 1 through 43, inclusive.

50. Pursuant to the FLSA [29 U.S.C. §207] employees must be paid extra compensation for working overtime and no employer shall require an employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

51. During their employment with MBE, Plaintiffs worked hours in excess of eight (8) hours a day and forty (40) hours a week and were denied this right and forced to forgo their legally required meal and rest periods and/or they were interrupted by MBE in violation of law.

52. As a result of MBE's failing to provide them with overtime pay and meal and rest breaks, Plaintiffs sustained damages in the amount of extra compensation due them for each overtime hour as well as wages due and entitled to one (1) additional hour of pay at their regular rate of compensation for each time they were not provided with a meal or rest period, in an exact amount to be determined at trial, to the fullest extent permitted under the statutory time period and pursuant to the FLSA [29 U.S.C. §§215 and 216].

53. Plaintiffs will seek attorneys' fees and costs incurred in prosecuting this action under the FLSA [29 U.S.C. §§215 and 216].

SIXTH CAUSE OF ACTION

VIOLATIONS OF CALIFORNIA *LABOR CODE* §§ 226.7 AND 512

(AGAINST DEFENDANTS AND DOES 1 TO 50)

54. Plaintiffs reallege and incorporate herein by reference, as though set forth in full, each and every allegation contained in Paragraphs 1 through 48, inclusive.

55. Pursuant to California *Labor Code* §§ 226.7 and 512 employees must be paid extra compensation for working overtime and no employer shall require an employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

56. During their employment with MBE, Plaintiffs worked hours in excess of eight (8) hours a day and forty (40) hours a week and were denied this right and forced to forgo their legally required meal and rest periods and/or they were interrupted by MBE in violation of law.

57. As a result of MBE's failing to provide them with overtime pay and meal and rest breaks, Plaintiffs sustained damages in the amount of extra compensation due them for each overtime hour as well as wages due and entitled to one (1) additional hour of pay at their regular rate of compensation for each time they were not provided with a meal or rest period pursuant to California *Labor Code* § 226.7, in an exact

amount to be determined at trial, to the fullest extent permitted under the statutory time period.

58. Plaintiffs will seek attorneys' fees and costs incurred in prosecuting this action under California *Labor Code* § 1194, *et seq.*

SEVENTH CAUSE OF ACTION

VIOLATION OF VIOLATIONS OF FLSA [29 U.S.C. §211]

(AGAINST DEFENDANTS AND DOES 1 TO 50)

59. Plaintiffs re-allege and incorporate herein by reference, as though set forth in full, each and every allegation contained in Paragraphs I through 53, inclusive.

60. An employer must provide with each payment of wages an accurate itemized statement in writing, showing, *inter alia*, the gross wages earned, total hours worked, net wages earned, and all applicable hourly rates in effect during each pay period and the corresponding number of hours worked at each hourly rate. Furthermore, an employer to afford current and former employees the right to inspect or copy the employment records.

61. MBE failed to provide accurate itemized statements to Plaintiffs at each time of payment of wages furnished to Plaintiffs throughout their employment as required. Additionally, they failed to maintain complete and accurate payroll records, eviscerating Plaintiffs' rights and in violation of the FLSA [29 U.S.C. §211].

62. As a result of MBE' failing to provide them with accurate itemized wage statements, Plaintiffs sustained damages and are entitled to at least fifty

dollars ($50.00) for the initial pay period and at least one hundred dollars ($50.00) for each subsequent pay period an accurate itemized wage statement was not provided, in an exact amount to be determined at trial, to the fullest extent permitted under the statutory time period. Plaintiffs also sustained damages as a result of MBE's violation of 29 U.S.C. §211 and is entitled to damages pursuant to 29 U.S.C. §§215 and 216.

63. Plaintiffs will seek attorneys' fees and costs incurred in prosecuting this action under the FLSA [29 U.S.C. §§215 and 216].

EIGHTH CAUSE OF ACTION

VIOLATION OF CALIFORNIA *LABOR CODE* § 226, *et seq.*

(AGAINST DEFENDANTS AND DOES 1 TO 50)

64. Plaintiffs re-allege and incorporate herein by reference, as though set forth in full, each and every allegation contained in Paragraphs 1 through 58, inclusive.

65. Pursuant to California *Labor Code* § 226(a), an employer must provide with each payment of wages an accurate itemized statement in writing, showing, *inter alia*, the gross wages earned, total hours worked, net wages earned, and all applicable hourly rates in effect during each pay period and the corresponding number of hours worked at each hourly rate. Furthermore, California *Labor Code* § 226(b) requires an employer to afford current and former employees the right to inspect or copy the records pertaining to subdivision (a).

66. MBE failed to provide accurate itemized statements to Plaintiffs at each time of payment of wages furnished to Plaintiffs throughout their employment as required by California *Labor Code* § 226(a). Additionally, they failed to maintain complete and accurate payroll records, eviscerating Plaintiffs' right under California *Labor Code* § 226(b).

67 As a result of MBE' failing to provide them with accurate itemized wage statements, Plaintiffs sustained damages and are entitled to fifty dollars ($50.00) for the initial pay period and one hundred dollars ($50.00) for each subsequent pay period an accurate itemized wage statement was not provided pursuant to California *Labor Code* § 226(e), in an exact amount to be determined at trial, to the fullest extent permitted under the statutory time period.

68. Plaintiffs will seek attorneys' fees and costs incurred in prosecuting this action under California *Labor Code* § 1194, *et seq.*

NINTH CAUSE OF ACTION

VIOLATION OF CALIFORNIA *BUSINESS & PROFESSIONS CODE* §17200, *et seq.*

(AGAINST DEFENDANTS AND DOES 1 TO 50)

69. Plaintiffs reallege and incorporate herein by reference, as though set forth in full, each and every allegation contained in Paragraphs 1 through 63, inclusive.

70. California *Business & Professions Code* § 17200, *et seq.*, provides that unfair competition shall mean and include "all unlawful, unfair or fraudulent business act or practices and unfair, deceptive, untrue or misleading advertising."

71. Plaintiffs are informed and believe and thereon allege that MBE and DOES 1-50 have engaged in unfair competition in violation of California *Business & Professions Code* § 17200, *et seq.*, by maintaining a workplace rife with wage and hour violations.

72. Such business practices are also a violation of California public policy, including but not limited to the following: California *Constitution*, Article I, § 8, California wage and hour laws, the FLSA and California *Civil Code* § 1770, *et seq.* The maintenance of such unfair business practices allows MBE to maintain an unfair advantage over other companies which comply with these laws, and the public policy of the State of California.

73. MBE falls within the definition of "person" as set forth at California *Business & Professions Code* §§ 17203 and 17506.

74. The unlawful, unfair, and fraudulent business practices of MBE described above present a continuing threat to members of the public in that MBE have or will soon engage in the conduct described above and members of the public are likely to be deceived when they pursue or gain employment with MBE. Pursuant to California *Business & Professions Code* § 17203, Plaintiffs seek an order from this Court that:

a. Provides injunctive and declaratory relief finding that MBE has violated the provisions, of California *Business & Professions Code* § 17200, *et seq.*; and

b. For an order enjoining MBE and its respective successors, agents, servants, officers, directors, employees, and all other persons acting in concert

with them, directly or indirectly, from engaging in conduct which violates California *Business & Professions Code* § 17200, *et seq.*

WHEREFORE, Plaintiffs pray for judgment against MBE as follows:

1. For general and compensatory damages, including prejudgment interest, in accordance with exact proof at the time of trial;

2. For unpaid wages, overtime pay, and any other benefits to which Plaintiffs would have been entitled to by reason of their employment with MBE, according to proof;

3. For Plaintiffs' costs and attorneys' fees;

4. For restitution and/or disgorgement of all ill-gotten gains (as to the Ninth Cause of Action);

5. For preliminary and permanent injunction against MBE from the acts of unfair competition as described in the Ninth Cause of Action; and

6. For such other and further relief as the Court may deem just and proper.

DATED:
September 14, 2012

FINK & STEINBERG

By: s/Keith A. Fink
Keith A. Fink
Sarah E. Hernandez
Attorneys for Plaintiffs
HECTOR NAVARRO,
MIKE SHIRINIAN,
ANTHONY PINKINS,
KEVIN MALONE and
REUBEN CASTRO

DEMAND FOR JURY

Plaintiffs hereby demand a jury trial on all such claims where a jury trial is permitted.

DATED:
September 14, 2012

FINK & STEINBERG

By: s/Keith A. Fink
Keith A. Fink
Sarah E. Hernandez
Attorneys for Plaintiffs
HECTOR NAVARRO,
MIKE SHIRINIAN,
ANTHONY PINKINS,
KEVIN MALONE and
REUBEN CASTRO